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No. 677

In the Supreme Court of the United States

OCTOBER TERM, 1963

THE CITY OF SEATTLE, ET AL., *Appellants*,

and

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE W. R. COLE, JUDGE, *Appellant*,

vs.

ROBERT R. BEEZER

and

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION OF ROBERT R. BEEZER TO DISMISS APPEAL

ALFRED J. SCHWEPPE
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Attorney for Robert R. Beezer.

January 16, 1964.

THE ARGUS PRESS, SEATTLE, WASHINGTON

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The Appellee Robert R. Beezer moves to dismiss this appeal for want of jurisdiction on the following grounds:

1. As shown on the face of the state supreme court's opinion (162 Wash. Dec. 559; 383 P.2d 895, set forth in full in Appendix A of Appellant's Jurisdictional Statement) the case was ordered tried in the state court below to determine a question of state law. If this question of state law is determined adversely to appellees, the case is at an end. No federal question arises unless the state court on this remand has first determined the question of state law favorably to appellees. Only in that contingent event does a federal question secondarily arise.

2. Being merely a remand for trial to determine a question of state law, the judgment appealed from is

not final as required by 28 U.S.C. § 1257. *Bostwick v. Brinkerhoff,* 106 U.S. 3; *Cincinnati Street Railway Co. v. Snell,* 179 U.S. 395; Simkins Federal Practice, Third Edition, Section 962, and cases cited.

3. No substantial federal question is presented by the judgment being appealed from. Simkins, *supra,* section 967, p. 689, and cases cited.

4. The judgment appealed from rests upon an adequate non-federal ground, as shown on the face of the state supreme court's opinion. Simkins, *supra,* section 968, and cases cited.

The foregoing points seem so obviously well taken under the rulings of this court, that it would seem unnecessary to ask this court to do more than to read the state court's opinion in the light of this court's decisions.

Indeed, these same points were made in opposition to the appellants' motion for a stay of the state court proceedings in the state trial court in this case. Mr. Justice Douglas denied the stay on November 9, 1963.

The appeal should be dismissed, and on the same grounds certiorari should not be entertained. See note below.

ALFRED J. SCHWEPPE
Attorney for Robert R. Beezer.

NOTE. While it has no bearing on the jurisdiction of this Court on this appeal, appellee Beezer herewith informs the Court as a fact that the cause below was tried in the trial court in November, 1963; that the trial court held that a part of the properties sought to be taken by appellant city were a part of the electrical plant or system of the P.U.D. within the meaning of the state law expressly prohibiting condemnation by a municipal corporation of P.U.D. properties. But the trial court next decided that appellant city could acquire that part by condemnation under the Federal Power Act, and has stated that it will enter a final judgment to that effect. Upon entry of judgment an appeal will be taken to the Superior Court of the State of Washington.